Supreme Court, U.S.
FILED
JUL 2 8 2003
OFFICE OF THE CLERK

No. 03-03

In The

Supreme Court of the United States

LCT TRANSPORTATION SERVICES, INC. a/k/a
LESTER COGGINS TRUCKING, INC.,
A Florida corporation,

Petitioner,

v.

VICTOR BARRAGAN, JORGE TORRES,
ROBERTO CAIAFFA, and
ERVING PEÑA, Florida citizens,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION

LISA SHEARER NELSON
Counsel of Record
HOLTZMAN EQUELS
433 North Magnolia Drive
Tallahassee, Florida 32308
Telephone (850) 222-2900
Facsimile (850) 222-2933

Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

12 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether the jury had before it sufficient evidence to determine that the Plaintiffs in this case were warehouse workers subject to the overtime provisions of the Fair Labor Standards Act?

II. Whether the employer must point to a specific Department of Labor opinion to support a "good faith" defense under 29 U.S.C. §259?

TABLE OF CONTENTS

	Page
Questions Presented For Review	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Case	1
Why Certiorari Should Not Be Granted	4
Conclusion	8

TABLE OF AUTHORITIES

Page

CASES

Blankenship v. Thurston Motor Lines, Inc., 425 F.2d 1193 (4th Cir. 1969) 5

Cole v. Farm Fresh Poultry, 824 F.2d 923 (11th Cir. 1987) 7

Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387 (1923) 4

Levinson v. Spector Motor Service, 300 U.S. 649 (1947) 5, 6

Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695 (1947) 5, 6

Vaughn v. Watkins Motor Lines, Inc., 291 F.3d 900 (6th Cir. 2002) 5

STATUTES, RULES AND REGULATIONS

29 U.S.C. §259 7

29 C.F.R. §782.5 5

Rule 10, Rules of the Supreme Court 4, 7

STATEMENT OF THE CASE

The appeal before the Eleventh Circuit was an appeal from a judgment in accordance with a jury verdict rendered in favor of four warehouse workers seeking overtime under the Fair Labor Standards Act. While the Petitioner claims that there was "overwhelming" evidence at trial to establish that the warehouse workers were "loaders" who are exempt from the Act, the jury, the trial court and the Eleventh Circuit found otherwise, stating that "a thorough review of the record compels us to conclude that there was sufficient evidence to support the jury's finding that plaintiff's did not exercise discretion in loading the trucks." Petitioner's Appendix at 5.

Petitioner presents a lengthy presentation of the evidence it contends supports a finding that the plaintiffs were loaders exempt from the FSLA. This version of the facts has been rejected by both the trial court, who refused to set aside a jury verdict where the verdict was not against the great weight of the evidence, and the Eleventh Circuit, who found that there was ample evidence at trial that the workers followed detailed instructions from supervisors regarding how to load the trucks and that the supervisors inspected the trucks prior to their departure.

The greater weight of the evidence revealed that Victor Barragan, Roberto Caiaffa, Jorge Torres and Irving Peña are all warehouse workers who work or have worked in the Miami warehouse for LCT. The company's personnel records list them as warehouse workers or receivers. During the time Plaintiffs have worked at LCT there have been approximately ten to fifteen warehouse workers and two supervisors per shift. When the cargo comes in from different companies by truck, the truck drivers unload it

and the warehouse workers receive it. They receive a list of customers, match the cargo to the customer and place the cargo in different lines based upon the destination where the cargo will go. The unloading and receiving process takes about 5-6 hours, sometimes longer.

After the flowers are received, there is sometimes a substantial delay before any loading is done. During that time, which may be up to four hours, the warehouse workers clean, do electrical work, plumbing, painting, and place the flowers on pallets. Loading the flowers is not done until after a day of receiving merchandise and separating it, usually after 8-10 hours of work each day. There is a standard method for stacking boxes of flowers at LCT; all boxes must be stacked "criss-cross." Flowers are either placed onto pallets and then loaded into the trucks using pallet jacks, or are loaded directly into the truck. In either case, the flowers are stacked according to the "criss-cross" method. How the truck is loaded depends on the instructions received with each particular load. Instructions are received from a supervisor or supervisor's assistant and are loaded according to a list by client. Warehouse workers do not decide who would load each truck or the order boxes are loaded; whether they will be placed on pallets or where they will be loaded on each truck: those decisions are all made by supervisors, who decide how the truck was to be loaded and how high the load would be.

"Wet" boxes are those where the flowers are loaded with water. Those boxes are put in a particular pallet and decisions on how to handle them are made by the supervisors. The warehouse workers do not place those boxes, or heavier items such as palms, on the trucks. Pallets containing wet boxes and items such as palms are loaded by a

forklift driver. If a supervisor is not present when the truck is loaded, it is because the supervisor is checking other trucks to make sure that they are loaded properly. Garcia, the supervisor, walks around to check out what the employees are doing.

More overtime hours are worked around Valentine's Day and Mother's Day, when the workers sometimes work as long as 36-48 hours nonstop. Victor Barragan has worked as many as 102 hours in a single week during a peak period. Generally, however, the warehouse workers put in a 12-14 hour work day, depending on how many boxes must be loaded. Prior to this lawsuit, some of their duties were different: for example, prior to the lawsuit, Jose Torres would help put boxes on the pallets but would not load pallets into the trucks. Barragan, who no longer works at LCT, stated that when he talks of loading, someone else was actually loading the cargo on the truck. Likewise, Erving Peña did not load trailers before the lawsuit was filed.

Victor Barragan was never told to worry about safety when loading the flower boxes during his employment at LCT; the only concern was to protect the flowers. While working at LCT, he never got into trouble regarding any issue concerning the safety of a truck. Sergio Rivera, who is an assistant supervisor at the Miami terminal, testified that he did not worry about safety while loading boxes until he became a supervisor. Rodriguez testified that securing the load is the supervisor's job. Sonny Price, the director of safety, testified that there is no specific training regarding safety in loading other than on-the-job training.

WHY CERTIORARI SHOULD NOT BE GRANTED

Rule 10 of the Rules of the Supreme Court indicates the character of the reasons considered in granting or denying petitions for certiorari. These reasons include situations where a decision of a circuit court of appeals that conflicts with another circuit court of appeals on the same important matter; has decided an important federal question in a manner that conflicts with a decision of a court of last resort; or has so departed from the accepted and usual course of judicial proceedings that this Court's supervisory power is required. The Court also may grant a petition for certiorari where a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Rule 10 expressly provides that a petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Under these criteria, Petitioner has not stated a basis for this Court to grant discretionary review. While the reasons cited in the rule are not exclusive, the Court should "be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals." *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387 (1923).

I.

This Case Does not Create a Conflict Among the Circuits or a Conflict with This Court Regarding the Scope of the "Loader" Exemption

In this case, the Eleventh Circuit correctly measured the actions of the Plaintiffs' against the current regulations defining exemptions for loaders, noting that to be entitled to the exemption, a loader must have the responsibility for "exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles will not be jeopardized." 29 C.F.R. §782.5, *citing Levinson v. Spector Motor Service,* 300 U.S. 649 (1947); *Pyramid Motor Freight Corp. v. Ispass,* 330 U.S. 695 (1947). The Eleventh Circuit found that there was ample evidence from which the jury in this case could determine that the Plaintiffs in this case did not exercise discretion in loading the trucks and thus were not subject to the exemption.

Petitioner relies on two cases to support its assertion that the Eleventh Circuit's decision creates a conflict within the circuits. *Blankenship v. Thurston Motor Lines, Inc.,* 425 F.2d 1193 (4th Cir. 1969) and *Vaughn v. Watkins Motor Lines, Inc.*, 291 F.3d 900 (6th Cir. 2002), are both cases decided on summary judgment. By contrast, in this case the jury apparently believed and the Eleventh Circuit concurred that sufficient judgment was not in fact exercised by the Plaintiffs in this case. No conflict between the circuits exists.

II.

The Eleventh Circuit's Decision Correctly Interprets the Current Standard by Which the Loader Exemption is Measured

Petitioners contend that review by this Court is necessary to determine the current scope of the loader exemption, and that the Eleventh Circuit's decision is in conflict with the decisions of this Court in *Levinson* and *Pyramid*. The federal regulations, upon which the Eleventh Circuit relied, have been adopted in accordance with and expressly rely on the decisions Petitioner cites. While Petitioner attacks the decision of the Eleventh Circuit, it does not contend that these regulations, upon which the Eleventh Circuit expressly relied, are contrary to this Court's prior interpretations regarding the scope of the exemption. To the contrary, Petitioner has consistently relied upon these exemptions but contended that the Plaintiffs in this case exercised the requisite degree of discretion to fit within the exemption. The jury, the trial court and the Eleventh Circuit held a different view based upon the evidence presented at trial. The Petitioner's argument is a thinly-veiled attempt to obtain yet another level of review and convince this Court to invade the province of the jury. This simply is not a basis for asserting this Court's jurisdiction.

III.

The Eleventh Circuit's Decision is Consistent with Prior Case Law Interpreting the "Good Faith" Defense

Petitioner contends that the Eleventh Circuit improperly limited the "good faith" defense provided in direct

contravention of 29 U.S.C. §259 and *Cole v. Farm Fresh Poultry*, 824 F.2d 923, 926-29 (11th Cir. 1987). The Eleventh Circuit stated that the employer must prove that the act or omission complained of was taken in good faith and was in conformity with and in reliance of a written administrative determination of the Wage and Hour Division of the Department of Labor, citing both 29 U.S.C. §259 and *Cole*. The Court held that the trial court did not err in refusing to submit the issue to the jury because LCT did not make the required showing. Petitioner's argument in this respect is no more than an attempt to have this Court review what Petitioner believes to be a misapplication of a properly stated rule of law. Rule 10, Rules of the Supreme Court.

IV.

The Case Does Not Present an Issue of Nationwide Importance

Petitioner submits that this case is one of nationwide importance because there are over 110,416 trucking establishments and FSLA litigation is on the rise. These two factors alone do not equate to a case of national importance. Simply put, this case is one where the jury believed the Plaintiffs' view of the facts and rejected that presented by the employer. Likewise, the Eleventh Circuit properly applied existing authorities to the record presented. This Court's resources are not required for further review of the issues.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

LISA SHEARER NELSON
Counsel of Record
Florida Bar No. 370657
HOLTZMAN EQUELS
433 North Magnolia Drive
Tallahassee, Florida 32308
Telephone (850) 222-2900
Facsimile (850) 222-2933

Attorneys for Respondents
Victor Barragan
Jorge Torres
Roberto Caiaffa
Erving Peña